

**THE HIGH COURT
JUDICIAL REVIEW**

[2021 No. 525 JR]

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTIONS 50, 50A AND 50B OF THE
PLANNING AND DEVELOPMENT ACT 2000 AND IN THE MATTER OF AN APPLICATION**

BETWEEN

DUBLIN 8 RESIDENTS ASSOCIATION

APPLICANT

AND

AN BORD PLEANÁLA, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

AND

CWTC MULTI-FAMILY ICAV (BY ORDER)

NOTICE PARTY

(No. 2)

JUDGMENT of Humphreys J. delivered on Friday the 12th day of August, 2022

1. In *Dublin 8 Residents Association v. An Bord Pleanála* [2022] IEHC 116, [2022] 3 JIC 1106 (Unreported, High Court, 11th March, 2022), I granted an order amending the title of the proceedings and decided in principle to refer certain questions to the CJEU.
2. I now deal with certain procedural matters prior to the formal order for reference.
3. In the No. 1 judgment I gave the parties the option of proposing the addition of any *amici curiae* that might assist the formulation of the formal order for reference and that might assist the CJEU, but no such proposals were made.
4. To assist the CJEU, a full list of the relevant EU, international and domestic legal material is set out in the appendix to the judgment together with web links.
5. It is now necessary to give directions for the purpose of ensuring the timely submission of the reference to the CJEU.
6. With those matters addressed, the order for reference will be dealt with in a separate judgment.
7. Accordingly, the order will be as follows:
 - (a). I will direct that the applicants lodge the following documents with the List Registrar in an electronic form having agreed the contents with the other parties, as soon as

practicable and in any event not later than 9th September, 2022, for transmission to the CJEU by the Principal Registrar:

- (i). a contents page in electronic form of the documents submitted; and
- (ii). a PDF containing all pleadings, with any names of natural persons redacted from orders and judgments (leaving initials only). If this PDF exceeds 30MB, it is to be split into separate PDFs each of which should not individually exceed 30MB. The PDF(s) should include among other pleadings and papers:
 - 1. a scanned copy of the signed approved version of all judgments (including the judgment for reference (the No. 3 judgment) when issued); however the version to be included of the present judgment should be a scan of the signed copy of the substantive part of the judgment together with an electronic version of the appendix which preserves the clickable links); and
 - 2. a scanned version of the order for reference;
- (b). I will adjourn the hearing of the balance of the matter pending the decision of the CJEU; and
- (c). the matter will be listed for mention on Monday 3rd October, 2022 at 2 p.m.

APPENDIX – RELEVANT LEGAL MATERIALS

European law

- (i). Article 47 of the Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012.
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>
- (ii). Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment. OJ L 175, 5.7.1985, p. 40–48.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31985L0337>
- (iii). Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. OJ L 327, 22.12.2000, p. 1–73.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0060>
- (iv). Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters. OJ L 124, 17.5.2005, p. 1–3.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005D0370>
- (v). Directive 2011/92/EU of the European Parliament and of the Council of 13th December, 2011 on the assessment of the effects of certain public and private projects on the environment (as amended by council directive 2014/52/EU).
<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0092&from=EN>
- (vi). Directive 2014/52/EU of the European Parliament and of the Council of 16th April, 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1–18).
<https://eur-lex.europa.eu/eli/dir/2014/52/oj>

European Caselaw

- (i). Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun genom dess marknämnd* (European Court of Justice, 15th October, 2009, ECR 2009 I-09967, ECLI:EU:C:2009:631).
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=76763&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1978244>

- (ii). Case C-115/09 *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein Westfalen eV v. Bezirksregierung Arnsberg* (Court of Justice of the European Union, 12th May, 2011, ECLI:EU:C:2011:289).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=82053&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1978244>

- (iii). Case C-348/15 *Stadt Wiener Neustadt v. Niederösterreichische Landesregierung* (Court of Justice of the European Union, 17th November, 2016, ECLI:EU:C:2016:882).

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015CJ0348&qid=1652191111309&from=EN>

- (iv). Case C-664/15 *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v. Bezirkshauptmannschaft Gmünd* (Court of Justice of the European Union, 20th December, 2017, ECLI:EU:C:2017:987).

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=198046&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1978244>

- (v). Case C-826/18 *LB v. College van burgemeester en wethouders van de gemeente Echt-Susteren* (Court of Justice of the European Union, 14th January, 2021, ECLI:EU:C:2021:7).

<https://curia.europa.eu/juris/liste.jsf?num=C-826/18>

International law

- (i). The UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus (Denmark) on 25th June, 1998 ('the Aarhus Convention').

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27

- (ii). The UN/ECE Aarhus Convention: An Implementation Guide 2nd ed. (2014).

https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

Domestic legislation

- (i). Statute of Limitations 1957.

<http://revisedacts.lawreform.ie/eli/1957/act/6/revised/en/html>

- (ii). Order 15 of the Rules of the Superior Courts 1986, as amended.
<https://www.courts.ie/rules/parties>
- (iii). Order 84 of the Rules of the Superior Courts 1986, as amended.
<https://www.courts.ie/rules/judicial-review-and-orders-affecting-personal-liberty>
- (iv). Planning and Development Act 2000, as amended.
<https://revisedacts.lawreform.ie/eli/2000/act/30/revised/en/pdf?annotations=true>
- (v). Irish Collective Asset-Management Vehicles Act 2015.
<http://revisedacts.lawreform.ie/eli/2015/act/2/revised/en/html>
- (vi). Planning and Development (Housing) and Residential Tenancies Act 2016.
<http://revisedacts.lawreform.ie/eli/2016/act/17/revised/en/html>

Domestic caselaw

- (i). *Feeney v. MacManus* [1937] I.R. 23.
<https://app.justis.com/case/feeney-and-shannon-vmacmanus-and-others/overview/c4Cdn3qdn4Wca>
- (ii). *Walsh v. Butler* [1997] IEHC 9, [1997] 2 I.L.R.M. 81.
<https://app.justis.com/case/walsh-v-butler/overview/c4Gdm3KtmZWca>
- (iii). *Southern Mineral Oil Limited v. Cooney (No. 2)* [1999] 1 I.R. 237.
<https://app.justis.com/case/cooney-southern-mineral-oil-ltd-in-liquidation-v-no-2/overview/c4CZmYKtoXWca>
- (iv). *B.V. Kennemerland Groep v. Montgomery* [2000] 1 I.L.R.M. 370.
<https://app.justis.com/case/kennemerland-groep-v-montgomery-sons/overview/c5aZm3qJmZWca>
- (v). *O'Connell v. Environmental Protection Agency* [2001] IEHC 102, [2001] 4 I.R. 494.
<https://app.justis.com/case/oconnell-v-environmental-protection-agency/overview/c4CZm0Kto4Wca>

- (vi). *Wicklow County Council v. O'Reilly* [2006] IEHC 265, [2006] 2 JIC 803 (Unreported, High Court, Clarke J., 8th February, 2006).
- https://www.courts.ie/acc/alfresco/35629fff-fcc5-48ff-8397-78c68fd1fc9c/2006_IEHC_265_1.pdf/pdf#view=fitH
- (vii). *Sweetman v. An Bord Pleanála* [2007] IEHC 153, [2008] 1 I.R. 277.
- https://www.courts.ie/acc/alfresco/4f5d12bb-fde5-475d-ab54-e1d6fbc059f6/2007_IEHC_153_1.pdf/pdf#view=fitH
- (viii). *Sandy Lane Hotel Ltd. v. Times Newspapers Ltd.* [2009] IESC 75, [2011] 3 I.R. 334, [2010] 1 I.L.R.M. 411.
- https://www.courts.ie/acc/alfresco/8c4a2f74-9684-40e4-a73e-398989e30376/2009_IESC_75_1.pdf/pdf#view=fitH
- (ix). *Sandy Lane Hotel Ltd. v. Times Newspapers Ltd.* [2010] IEHC 443, [2014] 3 I.R. 369.
- https://www.courts.ie/acc/alfresco/d077392f-9893-4a92-b393-e6166711cbef/2010_IEHC_443_1.pdf/pdf#view=fitH
- (x). *Waldron v. Herring* [2013] IEHC 294, [2013] 3 I.R. 323.
- https://www.courts.ie/acc/alfresco/abadd51a-0bd4-46c4-95d5-827ff08ed673/2013_IEHC_294_1.pdf/pdf#view=fitH
- (xi). *Sandymount & Merrion Residents Association v. An Bord Pleanála* [2013] IESC 51, [2013] 2 I.R. 578.
- https://www.courts.ie/acc/alfresco/802fc87d-4d99-4487-bde6-3caea034534e/2013_IESC_51_1.pdf/pdf#view=fitH
- (xii). *Dunne v. Mahon* [2014] IESC 24, [2014] 2 I.R. 337.
- https://www.courts.ie/acc/alfresco/7655de70-77d9-4d03-a5c0-cefaf036a22d/2014_IESC_24_1.pdf/pdf#view=fitH
- (xiii). *O'Neill v. Appelbe* [2014] IESC 31, [2014] 4 JIC 1003 (Unreported, Supreme Court, O'Donnell J. (McKechnie and Laffoy JJ. concurring), 10th April, 2014).
- https://www.courts.ie/acc/alfresco/4e994d9a-9510-4188-ad6f-9536842ff240/2014_IESC_31_1.pdf/pdf#view=fitH
- (xiv). *People Over Wind v. An Bord Pleanála* [2015] IEHC 271, [2015] 5 JIC 0106 (Unreported, High Court, Haughton J., 1st May, 2015).

https://www.courts.ie/acc/alfresco/284daa6d-8bd5-46e0-97f5-fa523911c55f/2015_IEHC_271_1.pdf/pdf#view=fitH

- (xv). *Irish Skydiving Club Ltd. v. An Bord Pleanála* [2016] IEHC 448, [2016] 7 JIC 2907 (Unreported, High Court, Baker J., 29th July, 2016).

https://www.courts.ie/acc/alfresco/62edec13-2989-4c80-b633-3478cfb0820d/2016_IEHC_448_1.pdf/pdf#view=fitH

- (xvi). *Hickey v. McGowan* [2017] IESC 6, [2017] 2 I.R. 196.

https://www.courts.ie/acc/alfresco/2c58eeab-3324-40f8-bd1e-7c2c0785cec3/2017_IESC_6_1.pdf/pdf#view=fitH

- (xvii). *North Meath Wind Farm Limited v. An Bord Pleanála* [2018] IECA 49, [2018] 3 JIC 2301 (Unreported, Court of Appeal, Peart J. (Ryan P. and Whelan J. concurring), 23rd February, 2018).

https://www.courts.ie/view/judgments-year/acdc9291-1da3-4818-bfa2-0d33ac2ffe20/b21c92c1-fd45-4d58-ad2e-d3c2e72e9945/2018_IECA_49_1.pdf/pdf

- (xviii). *Protect East Meath Limited v. An Bord Pleanála* [2020] IEHC 294, [2020] 6 JIC 1901 (Unreported, High Court, McDonald J., 19th June, 2020).

[https://www.courts.ie/acc/alfresco/9772367f-576d-41c8-8638-bbb88d0e8d04/\[2020\]_IEHC_294.pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/9772367f-576d-41c8-8638-bbb88d0e8d04/[2020]_IEHC_294.pdf/pdf#view=fitH)

- (xix). *Kerins v. An Bord Pleanála (No. 1)* [2021] IEHC 369, [2021] 5 JIC 3102 (Unreported, High Court, 31st May, 2021).

https://www.courts.ie/acc/alfresco/49da62b1-8d4c-43d9-aca1-b73f29845bf9/2021_IEHC_369.pdf/pdf#view=fitH

- (xx). *Dublin 8 Residents Association v. An Bord Pleanála* [2022] IEHC 116, [2022] 3 JIC 1106 (Unreported, High Court, 11th March, 2022).

https://www.courts.ie/acc/alfresco/a81be015-c125-44ce-9672-39ff40372e40/2022_IEHC_116.pdf/pdf#view=fitH

Other materials

- (i). *Conservative and Unionist Central Office v. Burrell* [1981] EWCA Civ 2, [1982] 1 WLR 522.

<https://www.bailii.org/ew/cases/EWCA/Civ/1981/2.html>

- (ii). European Commission, Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”) {SWD(2022) 117 final}

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders_en